(26,094)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 627.

LAWRENCE MAXWELL AND FULTON TRUST COMPANY OF NEW YORK, EXECUTORS OF THE LAST WILL AND TESTAMENT OF JAMES McDONALD, DECEASED, PLAINTIFFS IN ERROR,

vs.

NEWTON A. K. BUGBEE, COMPTROLLER OF THE TREASURY OF THE STATE OF NEW JERSEY, AND WILLIAM T. READ, STATE TREASURER.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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a New Jersey Court of Errors and Appeals.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors-Appellants,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, and Edward E. Grosscup, State Treasurer, Defendants-Respondents.

On Certiorari—On Appeal from Supreme Court.

State of the Case.

Coult & Smith, Attorneys for Appellants.
William A. Smith, Edward De Witt (of the New York bar), of Counsel.
The Attorney General, Attorney for Respondents.
John R. Hardin, of Counsel.

1 *Writ of Certiorari.*

Allowed December 31, 1915.

New Jersey Supreme Court.

NEW JERSEY, *ss:*

[L. S.]

The State of New Jersey to Edward I. Edwards, Comptroller of the Treasury of the State of New Jersey:

We being willing for certain reasons to be certified of a certain return, appraisement, assessment or fixing of a transfer or inheritance tax upon the transfer of property left by the late James McDonald or a tax on the property passing under his will to beneficiaries thereof, which appraisement, assessment or fixing of tax was made on or about the 15th day of December, 1915:

We do hereby command that you send under your hand and seal to our Justices of our Supreme Court of Judicature, at Trenton, on the 24th day of January, 1916, the said return, appraisement, assessment or fixing of said tax together with all things touching and concerning the same, as fully and entirely as they remain before you, together with this writ, that we may further cause to be done thereon what of right we shall see fit to be done.

2 Witness the Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, the 4th day of January, 1916.

WILLIAM C. GEBHARDT, *Clerk.*

COULT & SMITH, *Attorneys.*

(Endorsement.)

Allocatur December 31, 1915.

SAMUEL KALISCH, *J. S. C.*

3 *Return.*

Filed January 24, 1916.

New Jersey Supreme Court.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, and Edward E. Grosscup, State Treasurer, Defendants.

On Certiorari—Return to Writ.

I, Edward I. Edwards, pursuant to the command of the within writ and for a return thereto, do hereby annex copies of all the papers relating to the transfer or inheritance tax levied against the estate of James McDonald, deceased, as within I am commanded.

EDWARD I. EDWARDS,
Comptroller of the Treasury of the State of New Jersey.

Tax on Transfer of Shares of Stock in New Jersey Corporations Standing in the Name of a Non-resident Decedent.

Estate of James McDonald, Late of Washington, D. C.

Executors Lawrence Maxwell and Fulton Trust Company of New York.

Post-office Address, care of De Witt, Lockman, and De Witt, 88 Nassau St., N. Y. C.

Date of Death of Decedent, January 13, 1915.

Shares of Stock in New Jersey Corporations.

Number of shares. Cap.	Pfd.	Com.	Name of Company.	Market value.	Total.
5	...	...	Borne-Scrymser Company	$255.00	$1,275.00
6	...	...	Colonial Oil Company.....	100.00	600.00
2478	...	...	Standard Oil Company.....	400.00	991,200.00
302	...	...	Union Tank Line Company.....	85.00	25,670.00
...	...	250	National Lead Company.....	46.00	11,500.00
...	750	...	National Lead Company.....	107.50	80,625.00
21	...	...	National Fuel Gas Company.....	195.00	4,095.00
					$1,114,965.00
N. J. stocks specifically bequeathed to widow and stranger				.....	328,914.04
					$786,050.96
Capital stock.					
600			Standard Oil Company.....	$400.00	$240,000.00
1—213617/983383			Borne-Scrymser Company.....	255.00	310.38
1—512417/983383			Colonial Oil Company.....	100.00	152.10
73—208841/983383			Union Tank Line Company.....	85.00	6,223.05
					$246,685.53
Tax assessed on above specifically bequeathed to widow:					
			$50,000.00 1%,	$500.00	
			100,000.00 1½%,	1,500.00	
			96,685.53 2%,	1,933.71	
				Tax—	$3,933.71
200			Standard Oil Company.....	$400.00	$80,000.00
			Borne-Scrymser Company, Colonial Oil Company, Union Tank Line Company, ...	.....	2,228.51
					$82,228.51

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Tax assessed on above stocks specifically bequeathed to stranger:				
	$82,228.51			
		.05	Tax.—	$4,111.42
Interests taxable:				
Legacies, etc., to beneficiaries in 5% class	$356,761.26	5%	$17,838.06	
Int. of widow in estate other than N. J. stocks specifically bequeathed	$294,712.99			
Stat. exemption	5,000.00			
	$289,712.90			
	$3,314.47	2%	66.29	
	286,398.52	3%	8,591.95	
Residuary estate taxed in this proceeding as passing to the son and 2 grandchildren	$2,718,131.79			
Stat. exemption	15,000.00			
	$2,703,131.79			
	$135,000.00	1%	1,350.00	
	300,000.00	1½%	4,500.00	
	300,000.00	2%	6,000.00	
	1,968,131.79	3%	59,043.95	
			$97,390.25	
Gross	$3,969,333.25		.2159	
Less N. J. stock spec. bequeathed.	328,914.04		Tax.—	$21,026.55
Appraised Value of Estate	$3,640,419.21)	$786,050.96(.2159		
			Total tax.—	$29,071.68
Deductions	279,813.17			
Net Estate	[$3,360,606.04]*			
Legacies, etc.	651,474.25			
Residue	$2,718,131.79			

Total Appraised Value of Shares in New Jersey Corporations	$1,114,965.00
Tax payable if decedent had lived in New Jersey and all the property had been located in this State	$105,435.38
Percentage of whole estate invested in New Jersey stocks, not spec. bequeathed	.2159
Tax due New Jersey	$29,071.68

[* Figures enclosed in brackets erased in copy.]

6 In the Matter of Estate of James McDonald, Deceased.

State of New York,
County of New York, ss:

Henry W. Reighley being duly sworn deposes and says that he is the 2nd Vice President of the Fulton Trust Company of New York.

That Lawrence Maxwell and the said Fulton Trust Company of New York are the duly qualified and acting executors of the estate of James McDonald, who died testate on the 13th day of January, 1915, at Washington in the District of Columbia, and that on said date he was a resident of Washington in the District of Columbia.

That De Witt, Lockman & De Witt of No. 88 Nassau Street, Borough of Manhattan, City and State of New York, are the attorneys for said executors of said estate.

The total amount of estate wherever situated of which decedent died seized and possessed at actual value at time of death is:	
Real Estate	$4,250.00
Personal Estate	3,965,083.25
Total estate as per details of Schedule A attached hereto and part hereof	3,969,333.25
The total amount of property real and personal within the jurisdiction of New Jersey owned by the decedent at actual value at date of death of decedent is:	
7 Real Estate	None
Personal Estate	1,114,965.00
Total estate in New Jersey as per details of Schedule B attached hereto and part hereof other than which the decedent at the time of death possessed no property within the jurisdiction of New Jersey	1,114,965.00
The amount of debts owed by the decedent at the time of death, mortgages on real estate excluded, was as per details of Schedule C attached hereto and part hereof	20,213.17
The expenses of funeral and estimated expenses of administration, as per Schedule D attached hereto and part hereof	250,600.00

The names of beneficiaries and relationship of each to decedent are as follows:

Names.	Relationship to decedent.	Survived decedent.
Mrs. Nellie Carpenter, (Born Mch. 22, 1856)	Niece	Yes
Mrs. C. H. Falloon, (Born May 23, 1839)	Mother-in-law	Yes
Mrs. Sarah E. Fraser, (Born Nov. 7, 1839)	Cousin by marriage	Yes
Mrs. Helen B. Rule, (Born Nov. 27, 1850)	Sister-in-law	Yes
Mr. Robert Sanders, (Born Jan. 24, 1826)	Brother-in-law	Yes
8 Mrs. Flora Lourie	Grand-niece	Yes
Mrs. May Affled	No relation	Yes
Mrs. Mamie Edward	Second cousin	Yes
Miss Helen Fraser	No relation	Yes
Miss May Fraser	No relation	Yes
Miss Jessie Fraser	No relation	Yes
Miss Clara Bowen	No relation	Yes
Miss Lillie Bowen	No relation	Yes
Mrs. Hugh Gibson	No relation	Yes
Mrs. James Holmes	No relation	Yes
Mrs. Mary Weitzel	No relation	Yes
Mrs. Alex Murison	No relation	Yes
Mrs. Cora E. Rower	No relation	Yes
Mr. J. McD. Holtziner	No relation	Yes
Mr. Wm. R. Palmer	No relation	Died Dec. 3, 1914
Protestant Widows' and Old Men's Home in Cincinnati, O	———	Yes
Dilkusha Wrench, (Born Dec. 30, 1899)	No relation	Yes
John Wrench, (Born Apr. 21, 1901)	No relation	Yes
James Jeram Briggs, (Born Mch. 30, 1902)	No relation	Yes
Christina Watson	No relation	Yes
Mrs. Johnson	No relation	Yes
Jessie Kittredge	No relation	Yes
J. Walter Jones	No relation	Yes
Charlotte Jane Isabelle McDonald	Wife	Yes
Arthur B. Campbell, (Born June 8, 1887)	Stepson	Yes
James McDonald, Jr., (Born May 8, 1890)	Son	Yes
James McDonald, 3d, (Born Sept. 10, 1913)	Grandson	Yes
9 Robert Alexander McDonald,		

(Born May 12, 1915).....Grandson .....Yes
Beulah McDonald,
(Born Oct. 19, 1890).....Daughter-in-law .....Yes

(Signed) HENRY W. REIGHLEY.

Sworn to before me this 15th day of November, 1915.

(Signed) E. H. CALLANAN, JR.,
Notary Public, Kings County.

No. 175 Certificate filed in New York County No. 65 Kings County, Register No. 7031. New York County registered No. 7078. Commission expires March 30, 1917.

(Court Clerk's Certificate Attached.)

(A) I James McDonald a citizen of the United States of America at present residing at 57 Cadogan Square London England—temporarily—make this as and declare it to be my last Will and Testament. All previous Wills are hereby revoked.

(B) I request that all my debts at the time of my death and all the expenses attending my death and funeral be paid as promptly as possible and that my wife and all others who are dependent on me and are provided for in this Will, be supplied with such funds as may be necessary for them pending the carrying out of the provisions hereinafter stated applying to them.

(C) I bequeath to the following named persons—during their lives—the Annuities stated, to be paid to them at such times and in such amounts as they may desire;

To Mrs. Nellie Carpenter My Niece Three thousand dollars ($3000x)
10
" Mrs. C. H. Falloon " Mother-in-law Twenty four hundred dollars ($2400x)
" Mrs. Sarah E. Fraser " Cousin by Marriage Twelve hundred dollars ($1200x)
" Mrs. Helen B. Rule " Sister-in-Law Nine hundred dollars ($900x)
" Mr. Robert Sanders " Brother-in-law Twelve hundred dollars ($1200x)

(D) I bequeath to the following named persons the amounts stated, to be paid to them as soon as legal formalities and financial arrangements will permit.

To Mrs. Flora Lourie My Grand Niece Twenty thousand dollars ($20000x)
" Mrs. May Affeld Adopted Child of my Sister Ten thousand dollars ($10000x)

" Mrs. Mamie Edward My Cousin-(second) Ten thousand dollars ($10000x)
" Miss Helen Fraser of Columbus Ohio Five thousand dollars ($5000x)
" Miss May Fraser " do Five thousand dollars ($5000x)
" Miss Jessie Fraser " do Five thousand dollars ($5000x)
" Miss Clara Bowen " Pierre S. Dakota Ten thousand dollars ($10000x)
" Miss Lillie Bowen " do Ten thousand dollars ($10000x)
" Mrs. Hugh Gibson " Cincinnati, O. Three thousand dollars ($3000x)
" Mrs. James Holmes " do Three thousand dollars ($3000x)
" Mrs. Mary Weitzel " do Three thousand dollars ($3000x)
" Mrs. Alex Murison " Chicago, Ill., Three thousand dollars ($3000x)

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" Mrs. Cora E. Rower " Wayne, Pa., Ten thousand dollars ($1000x)
" Mr. J. McD. Holtzinger " do. Ten thousand dollars ($10,000x)
" Mr. Wm. R. Palmer " Chicago, Ill., Three thousand dollars ($3000x)
" the Protestant Widows and Old Men's Home in Cincinnati, O., Ten thousand dollars ($10000x)

(E) I bequeath to Alis T. Wrench my Step Daughter in trust for her two children Dilkusha and John Wrench and her Nephew James Jeram Briggs the sum of Sixty thousand dollars ($60000x) being twenty thousand dollars ($20000x) for each of the three. She may pay out any part or all of both interest and principal that may be necessary for their proper support and education and when they arrive at legal age she may either pay over to them the amount then due or continue to them as much as may be sufficient for their support until they reach the age of thirty years when she must pay over to them the amounts then due to them. If any of the three should die in the meantime leaving no issue—the shares of the deceased shall be divided share and share alike between the survivors.

(F) I bequeath to the following named Servants—provided they are still in my service at the time of my death:

To Christina Watson Housekeeper One thousand pounds sterling (£1000—)
" Mrs. Johnson Cook One thousand pounds sterling (£1000—)

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" Jessie Kittredge Housemaid Six hundred pounds sterling (£600—)
" J. Walter Jones Butler Eight hundred pounds sterling (£800—)
I also cancel Jones indebtedness to me of £400.

(G) I bequeath to my Wife Charlotte Jane Isabelle—if she survives me Six hundred shares (600) of the stock of the Standard Oil Co. of New Jersey and a pro rata (600/983383) of the stocks of all the companies formerly subsidiaries of the said Standard Oil Co. of New Jersey Stocks of which I am the owner at the time of my death. This is in addition to the one hundred and fifty thousand dollars ($150000x) due to her from me under our ante-nuptial agreement. If she shall have died before me and I have not otherwise provided by will or codicil one third (⅓) of this bequest shall go to her Son Arthur B. Campbell, one third (⅓) to her sister Mrs. Bernard Meuser—or issue—and one third (⅓) to my Niece Nellie Carpenter her issue or direct descendants. In the event of any of these three having died leaving no issue or direct descendants the share or shares of the deceased shall go to the survivor or survivors, or the issue or direct descendents of such survivor or survivors.

(H) I bequeath to my wife—Charlotte Jane Isabelle—in trust for her Son Arthur B. Campbell two hundred (200) shares of the stock of the Standard Oil Co. of New Jersey and a pro rata (200/983383) of the stocks of all the Companies formerly subsidiary to the said Standard Oil Co. of New Jersey of which I am owner of stocks
13 at the time of my death. She may pay over to him any part or all of both interest and principal as she may deem desirable—until he reaches the age of thirty years when she must pay over to him the entire amount then remaining in the fund.

(I) I bequeath to my son James McDonald, Jr., an Annuity of ten thousand dollars $10000x until he reaches the age of twenty six (26) years—After that age until he reaches the age of thirty (30) years the Annuity shall be twelve thousand dollars ($12000x) From the age of thirty (30) years during his life or until the estate is divided as hereinafter provided the Annuity shall be fifteen thousand dollars ($15000). James shall also have an annual allowance of twenty five hundred dollars ($2500) for each child his wife may bear him until the child reaches the age of fifteen years (15) after that the allowance shall be three thousand dollars ($3000) until the child reaches the age of twenty one (21) years.

(J) I bequeath to James my library now contained in my present residence on condition that he keeps it intact for his eldest son after his own death. The executors shall pay the expenses of packing and transport to such place as James may designate I also bequeath to James the jewelry now in my posession which was worn by his Mother as family jewels. These jewels may be worn by his wife during her life time. After her death the jewelry shall go to her eldest son or his issue if he shall have died leaving issue. If the eldest son shall have died leaving no issue the jewels shall go
14 to the next eldest son or his issue or failing such to the third eldest or issue my desire being that the jewelry continues to be worn by a McDonald so long as a direct descendant of mine is alive. If no son of James or issue of a son is living at the time of the death of his wife the jewelry shall go to the eldest living daughter. I also bequeath to James all the pictures and other effects—now contained in my present residence—which are in any way con-

nected with himself, his Mother's family—or my own—the McDonald—family except a portrait of myself by Nowell which is the property of my wife, Charlotte J. Isabelle.

(K) I hereby authorize the executors to invest in any business of which they approve and in the management of which James must take an active part any sum not exceeding One hundred thousand dollars ($100000x) All profits resulting from the investment shall go entirely to James but the principal shall remain part of the estate until the estate is divided in accordance with the provisions hereinbefore stated and may be recalled by the executors if they deem it desirable to do so before the division takes place. I also hereby authorize my executors to have built for James a residence at such time and place as he may designate at a cost of not exceeding thirty thousand dollars ($30000x)

(L) There being a mortgage of eight thousand pounds (£8000.) on my residence 57 Cadogan Square London Eng. and as I do not desire to increase my investment in England if the present holder of the Mortgage will not consent to extend the time for a
15 period not exceeding two years or if the Mortgage cannot be transferred to some other party on the same terms and for a period not exceeding two years—the property shall be sold as soon as this can be done without too great a sacrifice. If however the present holder of the mortgage or a successor on the same terms shall extend the time of the mortgage for a term not exceeding two years (2) my wife may occupy it for any part or all of that period the executors paying all interest, rates, taxes, ground rent and insurance during her occupancy. At the expiration of the two years or earlier if my wife should cease to occupy it, the property shall be sold the proceeds to be part of the estate. The pictures, furniture—ornaments and all the other effects contained in the house—excepting such as may still remain which I hereinbefore bequeathed to James, and my portrait by Nowell the property of my wife—and all other properties and effects which are the personal effects of my wife—shall be divided equally between my wife and James in such manner as they may agree on between themselves.

(M) Each child of James, by his wife, shall after reaching the age of twenty one (21) years receive an Annuity of four thousand dollars ($4000x) until the oldest surviving one shall reach the age of thirty (30) years when if James is still living the estate shall be divided as follows: One half (½) shall go to James the remaining one half (½) shall be divided between the children share and share alike. If any of the children shall have died before reaching the age of thirty (30) years leaving a wife and child or children
16 the share of such child shall go to the wife and child or children in such manner as the executors may deem best. The share of the child who has reached the age of thirty years shall be made over to him at once but the shares of those who have not reached that age shall be held in trust by the executors and shall be made over to them as they reach the said age. The share or shares of any child or children who may have died before reaching said age leaving a wife and issue may be divided between the wife and

issue at such time and in such manner as the executors may deem best. This provision applies in the event of the deceased child being a woman in which case the word husband shall be substituted for that of wife.

(N) If James should die leaving a wife and issue the widow shall receive from the Estate an annual allowance of fifteen thousand dollars ($15000x) until the first child of James shall reach the age of thirty (30) years when if still living she shall receive one third (⅓) of the estate the remaining two thirds (⅔) shall be divided among the issue in the manner set forth in paragraph M.

(O) If James should die leaving a widow but no children or issue of children, the Widow shall receive one third of the estate and the remaining two thirds (⅔) shall be divided equally between my Niece Nellie Carpenter or her direct descendants—the direct descendants of my present wife—the direct descendants of my first wife (Carre Rule) and the Protestant Widows and Old Men's Home in Cincinnati, O.

17 (P.) If James should die leaving neither widow nor issue nor direct descendants of issue the entire estate shall be equally divided between the beneficiaries named and in the manner set forth in Paragraph O.

(Q) If James should die leaving a Widow she shall have during her life the use free of rent of any residence that may have been built for James under the provision set forth in Paragraph K.

(R) I hereby appoint Lawrence Maxwell of Cincinnati, O. and the Fulton Trust Co. 149 Broadway New York to be the first executors of this Will and Testament. They shall have as full and complete powers as regards the management of the estate as I myself would have if living—it being understood however that they shall carry out all the provisions set forth in this Will and any Codicil or Codicils I may hereafter make to it. They shall have power to nominate a successor to either of them who may desire to retire from the Executorship or who may from any cause be unable to fulfil the duties of executor. This authority shall extend to all their successors. In the event that—from some unforeseen reason only one of the executors is available to attend to any matter requiring immediate attention such executor shall have all the power and authority that could be exercised by the two acting together. If a successor to a retiring director has not been nominated prior to the retiring executor having ceased to act—the remaining executor shall in consultation with my son James—if he is then living—nominate the successor. If James is not then living the surviving

18 executor shall with the approval of the court having jurisdiction nominate the successor. It is natural and desirable that the Fulton Trust Company should be the custodian of the assets of the estate but all transactions of any nature outside of those demanded by the provisions this Will and any Codicils shall have the approval of the other if another exists at the time. As long as Lawrence Maxwell continues to be an executor he shall have full charge of all legal matters pertaining to the executorship. The executors shall have the power to have this Will probated in any

court they may select—if in the meantime I have not acquired a residence in the United States. The executors shall receive such remuneration as is customary in such cases and shall not be required to furnish any bond or security.

(S) I desire that this will shall not be made public if this can be legally avoided.

Witness my hand and Seal this twenty sixth Day of June 1913

JAMES McDONALD (J Mc D)
(SEAL)

Witnesses

We the undersigned bear witness that James McDonald is well known to us personally, that he has declared to us that this document is his last Will and Testament, that we have seen him sign and seal it, and that we fully believe him to be in such condition both physically and mentally as to enable him to make a Will with due care and consideration. We have further heard him declare that he is a citizen of the United States of America at present residing in
19 London England but having the intention of returning to and again taking up his residence in the United States when circumstances will permit.

F. E. Powell.
Rockwood
Walton-on-Thames

James S. Hack
"Conway"
Hallswelle Road,
Golder's Green, N. W.

I, James McDonald, a citizen of the United States of America at present temporarily residing at Number 57 Cadogan Square London England do make publish and declare this to be a Codicil to my last Will and Testament bearing date the 26th day of June in the year One thousand nine hundred and thirteen in manner and form following that is to say

First:—I do hereby revoke and annul the annuity of Three thousand Dollars given and bequeathed to my niece Mrs. Nellie Carpenter by paragraph C. of my said will and in place and stead thereof I give and bequeath unto my said niece Mrs. Nellie Carpenter an annuity of Three thousand six hundred Dollars during her natural life

Second:—I do hereby revoke and annul the annuity of Two thousand four hundred Dollars a year given and bequeathed to my mother-in-law Mrs. C. H. Falloon by paragraph C. of my said will for and during her natural life and in place and stead thereof I give and bequeath unto my said mother-in-law Mrs. C. H. Falloon an annuity of Three thousand Dollars during her natural life

Third:—I hereby revoke and annul the paragraph of my said will designated "I" and in the place and stead thereof I do
20 hereby give and bequeath to my son James McDonald an annuity of Fifteen thousand Dollars until he reaches the age of twenty-six years after that age until he reaches the age of thirty years the annuity shall be Eighteen thousand Dollars from the age of thirty years during his life or until the estate is divided as provided in said will the annuity shall be Twenty thousand Dollars James

shall also have an additional annuity of Twenty-five hundred Dollars for each child his wife may bear him and living at my decease until the child reaches the age of fifteen years after that the said additional annuity shall be Three thousand Dollars until the child reaches the age of twenty-one years

Fourth:—I hereby revoke and annul the latter part of the paragraph of my said will designated "J" which reads as follows: "I also bequeath to James all the pictures and other effects now contained in my present residence which are in any way connected with himself his mother's family or my own the McDonald family except a portrait of my self by Nowell which is the property of my wife Charlotte J. Isabelle" and I also revoke and annul the latter part of the paragraph of my said will designated "L" which reads as follows: "the pictures furniture ornaments and all other effects contained in the house excepting such as may still remain which I hereinbefore bequeathed to James and my portrait by Nowell the property of my wife and all other properties and effects which are the personal effects of my wife shall be divided equally between my wife and James in such manner as they may agree on between themselves" and in place and stead thereof I hereby provide as follows: All my household furniture useful and ornamental china engravings paintings statuary bronzes and all other works of art ornament or
21 curiosity of which I was possessed previous to my marriage to my present wife I give and bequeath unto my son James McDonald and all household furniture useful and ornamental china engravings paintings statuary bronzes and all other works of art ornament or curiosity which I have acquired since my marriage to my present wife I give and bequeath unto my wife Charlotte J. Isabelle McDonald

Fifth:—It is my will and I hereby direct that I be interred in the mausoleum situated in my plot in Brompton Cemetery London England and I hereby give and devise my said plat of ground in the said Brompton Cemetery with the mausoleum erected thereon unto my said son James to have and to hold the same unto him his heirs and assigns forever.

And it is my will and I desire that the remains of my present wife be placed in the mausoleum in my said plot in said Brompton Cemetery if my said wife should so desire.

Sixth:—I hereby revoke all and every part of the paragraph of my said will designated "K" and in place and stead thereof I hereby authorize and empower my said Executors to advance unto my said son James from my said estate a sum not to exceed Fifty thousand Dollars and I hereby give and bequeath the same unto my said son James for the purpose of erecting a house at such time and place as my said son James may designate.

Lastly:—In all other respects I do hereby ratify and confirm my said will and hereby republish and declare the same except as herein and hereby modified to be my last will and testament.

22 In Witness Whereof I have hereunto set my hand and affixed my seal this the fourteenth day of April in the year One thousand nine hundred and fourteen.

JAMES McDONALD. [SEAL.]

Signed sealed published and declared by the testator James McDonald as and for a a codicil to his last will and testament in the presence of the undersigned who at his request in his presence and in the presence of each other have hereunto subscribed their names as witnesses.

That the said James McDonald is well known to us personally and that we fully believe him to be in such condition both physically and mentally as to enable him to make a will with due care and consideration. We further heard him declare that he is a citizen of the United States of America at present temporarily residing in London England but having the intention of returning to and taking up his residence in the United States in the near future.

ARTHUR J. MORRIS,
662 *West* 137*th St., N. Y. City.*
JOHN A. MACK,
650 *West* 163*" St. N. Y. City.*

SCHEDULE A.

Estate of James McDonald, Deceased.

Personal Property Wherever Situated of Which said Decedent Died Possessed.

(Schedules of Bonds, Stocks, Jewelry, Household Furniture, Cash, Claims, Life Insurance.)

Total	$3,965,803.25

Real Property.

Real property in the State of Idaho	4,250.00
Total	$3,969,333.25

23

SCHEDULE B.

Shares.			Par value.		Appraised value.
5	Borne-Scrymser Co., capital stock... Certf. No. B100	@ 100	500.	@ 255	1,275
6	Colonial Oil Co..... Certf. No. B120	@ 100	600.	@ 100	600
2,478	Standard Oil Co. of New Jersey..... Certf. No. 43873	@ 100	247,800	@ 400	991,200
302	Union Tank Line Co..... Certf. No. B2054	@ 100	30,200	@ 85	25,670
250	National Lead Co.—Common..... Certf. No. 27682 for 100 shares " " 27683 " 100 " " " A21635 " 50 "	@ 100	25,000	@ 46	11,500
750	National Lead Co.—Preferred..... Certf. No. 5192 for 100 shares " " 5201 " 100 " " " B17249 " 29 " " " 7584 " 100 " " " A20543 " 50 " " " 7987 " 100 " " " A21450 " 50 " " " 8945 " 100 " " " 8946 " 100 " " " B24038 " 30 "	@ 100	75,000	@ 107½	80,625
21	National Fuel Gas Co..... Certf. No. 675	@ 100	2,100	@ 195	4,095
					1,114,963

SCHEDULE C.

Detail of Debts Other Than Mortgages on Real Estate.

(Schedule omitted) $20,213.17

SCHEDULE D.

Expenses of Funeral and Estimated Expenses of Administration.

Jos. Gawler's Sons, Funeral Expenses.....	$600.00
Estimated expenses of administration.....	100,000.00
Estimated commissions of Executors.....	150,000.00
	$250,600.00

24 *Stipulation as to Payment.*

(Filed Jan. —, 1916.)

New Jersey Supreme Court.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, and Edward E. Grosscup, State Treasurer, Defendants.

Stipulation.

It is hereby stipulated between the respective parties:

1. That the prosecutors shall forthwith pay through the defendant, Edward I. Edwards, Comptroller of the Treasury of the State of New Jersey, to the defendant, Edward E. Grosscup, State Treasurer, the amount of the tax assessed against the estate of James McDonald and which is under review in this action.

2. That said payment shall be made and received without prejudice to the rights of the prosecutors in the event that it is determined that the tax should be set aside or reduced.

JOHN W. WESCOTT,
Attorney General, Attorney for Defendants.
COULT & SMITH,
Att'ys for Prosecutors.

25 *Rule.*

Entered Feb. 19, 1916.

New Jersey Supreme Court.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, et al., Defendants.

On Certiorari.

Rule.

It appearing that the attorneys for the prosecutors and the Attorney General, on behalf of the defendants, have entered into a stipu-

lation dated February 7th, 1916, as to facts to be used on the hearing and argument on the review of the validity of the tax under consideration in this action:

It is ordered that said stipulation entered into on the 7th day of February, 1916, as aforesaid, be made part of the record of this action and be used as evidence on the hearing and determination thereof.

Entered on motion of

COULT & SMITH,
Attorneys for Prosecutors.

26 Let the foregoing Rule be entered in the minutes.

SAMUEL KALISCH, *J. S. C.*

I hereby consent to the entry of the foregoing rule.

JOHN W. WESCOTT,
Attorney General, Attorney for Defendants.

27 *Agreed Statement of Facts.*

Filed Feb. 19, 1916.

New Jersey Supreme Court.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, et al., Defendants.

On Certiorari.

The following statement of facts is agreed to by the attorneys for the prosecutors and by the Attorney General on behalf of the defendants in the above entitled action, to be used at the hearing upon the return of the writ of certiorari granted hereon:

I.

That the statement in the affidavit of Henry W. Reighley and in the schedules attached thereto, annexed to the return of the writ in this case, shall, for the purposes of this action, be taken as true.

28 II.

That James McDonald died at the City of Washington, District of Columbia, on January 13, 1915, and was at and just prior to his

death resident in and domiciled at the City of Washington aforesaid and was a citizen of the United States and of said District.

III.

That a true copy of the last will and testament and codicil thereto of the said James McDonald was attached to the return of the writ in this action and was duly admitted to probate in the Supreme Court of the District of Columbia; that the executors named therein, Lawrence Maxwell and Fulton Trust Company of New York, have duly qualified as such and are now acting.

IV.

That no property of any kind, character or description was left by said decedent within the State of New Jersey other than the following certificates of stock:

No. of shares.	Name of company.
5	Borne-Scrymser Company.
6	Colonial Oil Company.
2478	Standard Oil Company.
302	Union Tank Line Co.
250 (Com.)	National Lead Company.
750 (Pref.)	National Lead Company.
21	National Fuel Gas Company.

That said certificates of stock were not physically within the limits of the State of New Jersey at the time of the death of the said James McDonald.

29 V.

That the Comptroller of the Treasury of the State of New Jersey made a demand upon the prosecutors for the payment of the tax assessed under review in this action, before the commencement thereof.

VI.

That Charlotte Jane Isabelle McDonald is and was at the time of the death of James McDonald resident and domiciled in the District of Columbia and was a citizen of the United States and of said District; that James McDonald, Jr., son of said decedent, and his two children, James McDonald, 3d, and Robert Alexander McDonald, were all at the time of the death of the said James McDonald and ever since have been resident and domiciled in Hailey, State of Idaho, and were and are citizens of the United States and of said State.

VII.

That Lawrence Maxwell, one of the executors, at the time of the death of the said James McDonald, resided and has ever since resided in the State of Ohio, and that he is domiciled in said State and is a citizen thereof and of the United States. That Fulton Trust Company of New York, the other executor, a corporation duly organized and existing under the laws of the State of New York, was such at the time of the death of the said James McDonald and has been ever since that time.

30

VIII.

That none of the beneficiaries named in the will of the said James McDonald were residents of the State of New Jersey at the time of the death of the said James McDonald.

IX.

The method by which the transfer inheritance tax was levied and assessed against the estate of James McDonald, deceased, late of Washington, D. C., and the amount thereof arrived at, is as follows:

First, the appraised value of the entire estate, wherever situate, was ascertained and fixed at $3,969,333.25. From this amount was deducted $328,914.04, being the appraised value of the New Jersey stocks specifically bequeathed to the widow and stranger, leaving $3,640,419.21, from which figure was deducted $270,813.17, being the amount allowed for debts, administration expenses, etc., leaving a net estate of $3,369,606.04; from this net estate was deducted legacies bequeathed under the will, together with legacies to beneficiaries in the 5% class and interest of widow in estate other than New Jersey stocks specifically bequeathed, amounting to $651,474.25, leaving a residuary estate of $2,718,131.79.

The appraised value of the New Jersey stocks specifically bequeathed to the widow was ascertained to be $246,685.53, and the rate of taxation assessed thereon is 1 per cent., 1½ per cent. and 2 per cent., making the tax due this State on this specific bequest to the widow $3,933.71.

The appraised value of the New Jersey stock specifically bequeathed to the stranger was ascertained at $82,228.51, and the rate of taxation on the value of this bequest is 5 per cent., making
31 the amount of tax due $4,111.42. The appraised value of the New Jersey stocks owned by the decedent at the time of death was $1,114,965.00; from this appraised value was deducted the appraised value of the New Jersey stocks specifically bequeathed to the widow and stranger, amounting to $328,914.04, leaving the net appraised value of the New Jersey property, which formed a portion of the general assets of the estate, at $786,050.96.

The method employed in ascertaining the tax due this State on the transfer of the shares of stock of the New Jersey corporations not specifically bequeathed, is as follows:

The amount of legacies, etc., passing to beneficiaries taxed at the rate of 5 per cent. was determined at $356,761.26, making the tax due thereon at the rate of 5 per cent., $17,838.06. The interest of the widow in the estate, other than shares of New Jersey stocks specifically bequeathed, was determined to be $294,712.99, and the statutory exemption of $5,000.00 was deducted and the tax at the rate of 2 per cent. and 3 per cent. was $8,658.24. The residuary estate was taxed as passing to the son and two grandchildren and determined to be $2,718,131.79, and the statutory exemption of $5,000.00 to each, totaling $15,000.00, was deducted, and the balance taxed at the rate of 1 per cent., 1½ per cent., 2 per cent. and 3 per cent., making the tax on the residuary estate $70,893.95.

The total amount of tax on the interest of the collateral heirs and the amount passing to the widow, together with the residuary estate passing to the son and grandchildren, as set forth above, total $97,390.25.

The percentage or proportion of the New Jersey stocks (not
32 specifically bequeathed) which total $786,050.96, bears to the entire estate (less specific bequests of New Jersey stocks) which total $3,640,419.21, was determined to be .2159, thus:

$3,640,419.21) $786,050.96 (.2159.

This percentage or proportion of $97,390.25, which is the tax that would have been due if the decedent had died a resident of this State and all his property had been located here, equals $21,026.55.

The total amount of tax as set forth above, which included the tax on the New Jersey stocks specifically bequeathed to the widow and stranger, and the New Jersey stock which forms a portion of the general assets of the estate, totals $29,071.68.

X.

That the Standard Oil Company is a New Jersey corporation incorporated under the name of the Standard Oil Company of New Jersey on August 5, 1882, under "An Act concerning corporations," (Revision approved April 7, 1875), and its name changed to Standard Oil Company on March 19, 1892.

That the Borne-Scrymser Company is a New Jersey corporation incorporated March 13, 1893, under "An Act concerning corporations" (Revision approved April 7, 1875).

That the Colonial Oil Company is a New Jersey corporation incorporated March 5, 1901, under "An Act concerning corporations" (Revision of 1896).

That National Lead Company is a New Jersey corporation incorporated December 8, 1891, under "An Act concerning corporations" (Revision approved April 7, 1875).

33 That National Fuel Gas Company is a New Jersey corporation incorporated December 8, 1902, under "An Act concerngin corporations" (Revision of 1896).

That Union Tank Line Company is a New Jersey corporation incorporated July 14, 1891, under "An Act concerning corporations" (Revision approved April 7, 1875).

COULT & SMITH,
Att'ys for Prosecutors.

Dated February 7th, 1916.

JOHN W. WESTCOTT,
Att'y for Defendants.

34 *Reasons.*

Filed Feb. 2, 1916.

New Jersey Supreme Court.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, et al., Defendants.

On Certiorari—Reasons.

Lawrence Maxwell and Fulton Trust Company, Executors of the Last Will and Testament of James McDonald, deceased, by Coult & Smith, their attorneys, come and pray that the assessment of an inheritance transfer or transfer tax upon the stock in New Jersey corporations owned by said decedent at the time of his death, which tax was assessed on or about the 15th day of December, 1915, may be set aside, reversed and for nothing holden, or may be reassessed according to law as the determination and nature of this action shall require, for the following reasons:

1. Because the transfer tax under review in this action on the transfer of the stock in New Jersey corporations forming part
35 of the estate of James McDonald, late a non-resident of New Jersey, is assessed at a higher amount than would be assessed if said stock had belonged to a New Jersey decedent and a transfer tax assessed thereon at the death of said New Jersey decedent.

2. Because the transfer tax under review in this action on the transfer of stock in New Jersey corporations forming part of the estate of James McDonald, late a non-resident of New Jersey, is assessed pursuant to the third or last paragraph of Section 12 of an act, entitled, "An Act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April 20, 1909, as amended by Chapter 151, P. L. 1914, as amended by Chapter 392 of the Laws of 1915, entitled, "An Act to amend an act, entitled, 'An Act to tax the transfer of property of resident and non-

resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases'," and said paragraph of said Section 12 is inoperative as against the transfer of the aforesaid stock because the assessment of tax pursuant to the said paragraph denies to James McDonald and his estate, his executors, the beneficiaries under his will and his residuary legatees, all citizens and residents of the United States and citizens and residents of other States of the United States than New Jersey and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey and therefore contravenes Article 4, Section 2, Paragraph 1 of the Federal Constitution, and the prosecutors claim the protection thereof.

36 3. Because the transfer tax referred to in Reason 2 under review in this action on the transfer of stock in New Jersey corporations forming part of the estate of James McDonald, late a non-resident of New Jersey and a resident and citizen of the District of Columbia, is assessed pursuant to the third or last paragraph of Section 12 of the said acts referred to in Reason No. 2, and said paragraph of said Section 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Section 12 requires the enforcement of a law which abridges the privileges and immunities which were of James McDonald and now of his estate and his executors and the beneficiaries under his will and his residuary legatees, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

4. Because the transfer tax under review in this action and referred to in Reason 2 is assessed pursuant to the third or last paragraph of Section 12 of the acts therein referred to upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James McDonald, his estate, his executors and the legatees under his will, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the Fourteenth Amendment of the Federal Constitution, and the prosecutors claim the protection thereof.

37 5. Because the entire acts referred to in Reason No. 2 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV, Section 2, Paragraph 1 of the Federal Constitution by denying to the prosecutors and the other persons mentioned in Reason No. 2 privileges and immunities enjoyed by citizens of the State of New Jersey, and the prosecutors claim the protection of said constitutional provision.

6. Because the entire acts referred to in Reason No. 2 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the prosecutors and other persons referred to in Rea-

son No. 2 and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the prosecutors claim the protection of said constitutional provision.

7. Because the assessment of said tax referred to in Reason No. 2 under the acts therein referred to operate differently in the case of non-resident citizens of the United States and upon resident citizens of the State of New Jersey upon a transfer to persons of the same class, where the legacy is specific than where the legacy is general or residuary, and therefore said acts are inoperative and void for the same reasons set out in Reasons 2, 3 and 4.

8. Because the assessment of said tax referred to in Reason No. 2 under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and amended by Chapter 392 of the
38 laws of 1915 in the case of non-resident citizens of the United States operates differently than upon resident citizens of the State of New Jersey and non-resident citizens of the United States who are specific legatees, and therefore said statutes are inoperative and void for the same reasons set out in Reasons 2, 3 and 4.

9. Because as against the prosecutors and the other persons referred to in Reason No. 2 the assessment of said tax referred to in said Reason No. 2 under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of the Laws of 1915 in a case where there are non-resident residuary legatees is assessed in a different manner and at a higher rate than on the transfer of stocks bequeathed to specific legatees or general or residuary legatees of the same class referred to in Section 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the Laws of 1914, and amended by Chapter 392 of the Laws of 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in Reasons 2, 3 and 4.

10. Because the assessment of said tax referred to in the foregoing reasons and the acts therein referred to violate the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes, Annotated, pages 791-2).

11. Because the assessment of the tax referred to in the foregoing reasons is assessed under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock
39 in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV, Sec. 7, Paragraph 3.
Art. IV, Sec. 7, Paragraph 4.
Art. IV, Sec. 7, Paragraph 12.

12. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

13. Because Chapter 228 of the Laws of 1909 and as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

40 14. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part thereof shall be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act.

15. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to.

16. Because the stock hereinbefore referred to or the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable in the acts referred to in the foregoing reasons.

17. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has been levied, is unconstitutional, as it is a property tax and violates Article IV, Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

41 18. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential equality of taxation which requires that taxes be imposed under a rule of uniformity.

19. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the suc-

cession thereto and transfer thereof, which cannot be subject to taxation by the State of New Jersey.

20. Because the said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

21. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I, Section 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

42 22. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision.

COULT & SMITH,
Attorneys for Prosecutors.

43 *Additional Reasons.*

23. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided.

24. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, referred to the entire amount of the legacy transferred under the will instead of the amount subject to the previous rate of taxation.

25. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the legacy of New Jersey assets passing to the beneficiary.

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1 of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, on the legacy of the New Jersey assets passing to the beneficiary.

COULT & SMITH,
Attorneys for Prosecutors.

44 I hereby consent to the filing of the within additional reasons as of time.

JOHN W. WESTCOTT,
Attorney General.

Rule substituting Wm. T. Reed defendant in place of Edward E. Grosscup as State Treasurer entered by consent and filed Dec. 18, 1916.

45 *Opinion.*

(Filed Nov. 29, 1916.)

New Jersey Supreme Court, June Term, 1916.

LAWRENCE MAXWELL et al., Executors, etc., Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, et al., Defendants.

Argued June Term, 1916; Decided November Term, 1916.

Writ of Certiorari removing State Tax.

Coult & Smith, and Edward De Witt, of New York, for Prosecutor.
John W. Wescott, Attorney General, and John R. Hardin, for the State.

Argued before Justices Swayze, Minturn and Kalisch.

46 The opinion of the Court was delivered by

MINTURN, *J.*:

The writ is intended to review an assessment of a transfer tax, imposed by the State Comptroller, upon certain personality in this State, of which James McDonald, a non-resident died possessed.

The property in question, consists of certain stocks in the Standard Oil Company, and in six other New Jersey corporations, valued in the aggregate at $1,114,965. The deceased died in the District of Columbia, leaving a last will and testament, and a codicil, which were duly admitted to probate, and letters testamentary granted thereon in that District to Lawrence Maxwell of Ohio, and the Fulton Trust Company of New York, a corporation organized under the laws of that State, who have qualified as executors. The beneficiaries named in the will were at the time of testator's death non-residents of this State. The total amount of the State tax imposed was $29,071.68, the legality of which assessment is the subject of this litigation.

The tax was imposed in pursuance of Chapter 228 of the laws of 1909, as amended by Chapter 151 of the laws of 1914. A subsequent amendment was passed in 1915, (P. L. 1915, 745), but was not effective or in operation at the time of the death of the testator, and therefore has no bearing upon this issue.

The act of 1909 was the original act dealing with the subject matter of this contest, and presents in its title a clear statement of the legislative intent, "An act to tax the transfer of property of resident

and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases."

47 It is insisted that in imposing the tax the decisions of the New York Courts construing a statute substantially similar in verbiage to the act in question, should have been followed by the Comptroller. This contention, however, has been dealt with by this Court in Hopper v. Edwards, in an opinion by Mr. Justice Trenchard, and quite recently in Torrence v. Edwards, in an opinion by Mr. Justice Kalisch, both adjudications being adverse to the claim urged here. That question therefore, may be disposed of upon the doctrine of stare decisis.

The effect of the legislation under consideration has been determined by this Court, and the Court of Errors, in a series of cases in which its legality was attacked from various aspects, with the result of sustaining it as a legislative effort to impose a succession as contradistinguished from a property tax. It is further deducible from these decisions, that this legislative power, when not exerted in an arbitrary or capricious manner, or in disregard of fundamental rights, does not contravene any inhibition intended to secure equality of right, contained in the provisions of the Federal or State constitutions.

Neilson v. Russell, 76 L. 27.
Id. Court of Errors, p. 655.
Sawter v. Shoenthal, 54 Vr. 499.
Carr v. Edwards, 84 L. 667.
Beers v. Edwards, 84 L. 32.
Seuff v. Edwards, 85 I. 67.
Hopper v. Edwards, 96 Atl. 667.
Howell v. Edwards, Id. 186.

The inquiry presented by this controversy, is not any criticism of these fundamentals, but resolves itself entirely into a criticism of the legal effects of the amendment of 1914, in its effort to reach

48 the estates of non-resident decedents, by the method provided in section 20 of the act which is as follows: "A tax shall be assessed on the transfer of property in this State of a non-resident decedent, if all or any part of the estate of such decedent wherever situated shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax, as the said estate would have been subject to under this act, if such non-resident decedent had been a resident of this State, and all his property, real and personal, had been located within this State, as such property within this State, bears to the entire estate whereever situated, provided that nothing in this clause contained shall apply to any specific bequest or devise of any property in this State."

The clear intent of this legislation it has been determined, is to provide a mathematical formula to the estate of a non-resident decedent, which in practical application will work out a tax not on the entire estate of the decedent, but upon that portion of it within the jurisdiction, so as to practically equalize in administration the tax imposed by the same legislation upon the estates of resident decedents.

That this object may be adequately and legally attained by this legislative method is evidenced by the authorities.

The method in question doubtless had its origin, in an intimation contained in the opinion of Mr. Justice Swayze, in Beers v. Edwards (supra), in commenting upon the act of 1909, wherein he declared. "We do not mean to say that the legislature might not have adopted another basis for the computation of the entire tax. It might, perhaps, have enacted that the entire tax should be the amount
49 to which the estate would have been subject, if the decedent had been a resident of New Jersey, and all his property had been situated here."

Referring to the same subject in the subsequent case of Carr v. Edwards, (supra) in the Court of Errors, he declared, "The object and the effect of section 12 was to equalize the rate of the transfer tax as between the estate of resident and non-resident decedents. The amount (of the tax) depends on the ratio of the New Jersey property to the entire estate wherever situated. This, however, merely affords a measure of the tax imposed; the tax is still by the very words of the section imposed upon the property located within the State."

This method of dealing with the estate of non-residents found within the State was earlier supported by the views of Mr. Justice Reed in Tilford v. Dickinson, 79 L. 302, in dealing with the legislative modus operandi imposed by the tax act of 1906. This method of taxation was also dealt with by Mr. Justice Kalisch, in this Court in Howell v. Edwards (supra) and its validity was there recognized and subsequently was the subject of consideration, and was practically applied by this court in the recent opinion by Mr. Justice Kalisch in Torrence v. Edwards (November Term, 1916). Pursuit of the subject further from the view point of legality and reasonableness under the constitutional inhibitions, of this legislative method of equalizing taxation, as between the estates of resident and non-resident decedents, might appear to be but an academic task in the light of these adjudications; but it may not be out of place to observe in passing, that the principle of this legislation has met with the approval of the highest courts in other jurisdictions, where
50 the question has been presented for judicial determination.
Adams Ex. Co. v. Indiana, 165 U. S. 252.
Adams Ex. Co. v. Ohio, 165 U. S. 195.
Adams Ex. Co. v. Kentucky, 166 U. S. 171.
St. Louis v. W. Ry. Co. v. Arkansas, 235 U. S. 350.

The general power of the State to enact legislation of this character, and it- impregnability to attack on constitutional grounds, is amply emphasized and vindicated by Mr. Justice Pitney, in St. Louis v. W. Ry. Co. v. Arkansas, wherein he declares, "Nothing in the fourteenth amendment imposes any iron clad rule upon the States with respect to their internal taxation, or prevents them from imposing double taxation, or any other form of unequal taxation, so long as the inequality is not based upon arbitrary distinctions." There remains therefore, to consider only the concrete objection presented by the prosecutor, in the form of various reasons to this method of taxa-

tion; the contention being that in the case sub judice its application results in inequality to this particular estate.

It must not be over-looked in any calculation, that as our legislation now stands, the non-resident decedent is accorded a favored status, since he is exempted in the succession tax, from any imposition upon bonds and mortgages, commercial paper, bank deposits and debts, within this State, which taxable assets are subject to taxation as assets of a resident decedent, Hopper v. Edwards, ubi supra. Mention of this consideration is suggested, to evince the fact which at once must become apparent, that, instead of subjecting the non-resident's estate to an arbitrary and discriminative tax, the legislation in question, if discriminatory at all, is obviously so only
51 in favor of the non-resident. That such legislation may eventuate differently in results in specific instances, when compared with the results attainable in the case of the resident decedent, presents no legal ground for its condemnation. The never ending aim of popular government, and the age long dream of the political economist, have been the evolution of a golden rule productive of equality of taxation. In this as in many other fields of human endeavor, it must be manifest, that the perfect, is in reality, unattainable.

That the ratio rule applied in this case may not produce absolute equality in results, may be conceded; but it will answer its purposes in the complicated relationship of our State and Federal life, if it be a business-like, workable rule, manifestly the latest solution in the line of judicial and legislative thought upon one of the most abstruse problems of modern government.

It may well be, that the tax ratio in actual application in this instance, may as exemplified by the prosecutor's method of computation, produce a result different from that which will be obtained, under the method applicable to the estates of resident decedents; but as we have observed, that fact does not furnish the determining test as to the validity of this legislative scheme, nor does it prove the absence of the necessary constitutional element of equality, as that term has been defined by the adjudged cases. "It is," says the learned editor and commentator of the Cyclopedia of Law and Procedure, "a matter of common experience that absolute equality in the imposition of a tax is not attainable, nor is this the meaning of the constitutional provision. All that it requires is an aim and intention on the part of the legislature in framing the tax law, to approximate to the ideal of absolute equality, as closely as
52 the nature of the subject, and the necessities of practical administration will permit. Hence the courts will not pronounce a statute invalid, on this ground, unless it appears that it was framed on a plan or principle not calculated to produce equality and uniformity, or that its administration will result in such flagrant injustices, as to evidence an entire disregard of the constitutional requirement."

37 Cyc. 736 and cases cited.

Our examination of the computation of the tax made by the Comptroller, in this instance, satisfies us that it was made in accordance with the ratio provision of the act of 1914, and that it should for the reasons here presented be sustained.

The tax in question will therefore be affirmed.

53 *Rule Affirming Tax.*

(Entered Dec. 18, 1916.)

New Jersey Supreme Court, June Term, 1916.

LAWRENCE MAXWELL et al., Executors, &c., of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller, etc., et al., Defendants.

On Certiorari.

Rule.

The court having inspected the return, appraisement and assessment of the transfer or inheritance tax upon the transfer of property left by the above named James McDonald, deceased, and the proceedings thereon, and having heard and considered the arguments of counsel for the respective parties,

It is Ordered that the appraisement and assessment of the said transfer or inheritance tax be and it hereby is in all things affirmed, with costs to the defendants.

Rule actually entered December 18, 1916.

On motion of

JOHN W. WESCOTT,
Attorney General of New Jersey.

54 *Notice and Grounds of Appeal.*

(Filed Jan. 6, 1917.)

New Jersey Supreme Court.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, and WILLIAM T. READ, State Treasurer, Defendants.

On Appeal to the New Jersey Court of Errors and Appeals.

Notice and Grounds of Appeal.

To John W. Wescott, Attorney General, Attorney for Defendants:

Take Notice that the prosecutors appeal from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals, on the following grounds and on the following reasons:

1. Because the transfer tax under review in this action on the transfer of the stock in New Jersey corporations forming part of the estate of James McDonald, late a non-resident of New Jersey, is assessed at a higher amount than would be assessed if said
55 stock had belonged to a New Jersey decedent and a transfer tax assessed thereon at the death of said New Jersey decedent.

2. Because the transfer tax under review in this action on the transfer of stock in New Jersey corporations forming part of the estate of James McDonald, late a non-resident of New Jersey, is assessed pursuant to the third or last paragraph of Section 12 of an act entitled "An Act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April 20, 1909, as amended by Chapter 151, P. L. 1914, as amended by Chapter 392 of the Laws of 1915, entitled "An Act to amend an act entitled 'An Act to tax the transfer of property of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases,'" and said paragraph of said Section 12 is inoperative as against the transfer of the aforesaid stock because the assessment of tax pursuant to the said paragraph denies to James McDonald and his estate, his executors, the beneficiaries under his will and his residuary legatees, all citizens and residents of the United States and citizens and residents of other States of the United States than New Jersey and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey and therefore contravenes Article IV, Section 2, Para-

graph 1 of the Federal Constitution, and the appellants claim the protection thereof.

3. Because the transfer tax referred to in Reason 2 under
56 review in this action on the transfer of stock in New Jersey corporations forming part of the estate of James McDonald, late a non-resident of New Jersey and a resident and citizen of the District of Columbia, is assessed pursuant to the third or last paragraph of Section 12 of the said acts referred to in Reason No. 2, and said paragraph of said Section 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Section 12 requires the enforcement of a law which abridges the privileges and immunities which were of James McDonald and now of his estate and his executors and the beneficiaries under his will and his residuary legatees, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

4. Because the transfer tax under review in this action and referred to in Reason 2 is assessed pursuant to the third or last paragraph of Section 12 of the acts therein referred to upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James McDonald, his estate, his executors and the legatees under his will, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the Fourteenth Amendment of the Federal Constitution, and the appellants claim the protection thereof.

5. Because the entire acts referred to in Reason No. 2 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV,
57 Section 2, Paragraph 1 of the Federal Constitution by denying to the appellants and the other persons mentioned in Reason No. 2 privileges and immunities enjoyed by citizens of the State of New Jersey, and the appellants claim the protection of said constitutional provision.

6. Because the entire acts referred to in Reason No. 2 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the appellants and other persons referred to in Reason No. 2 and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the appellants claim the protection of said constitutional provision.

7. Because the assessment of said tax referred to in Reason No. 2 under the acts therein referred to operate differently in the case of non-resident citizens of the United States and upon resident citizens of the State of New Jersey upon a transfer to persons of the same class, where the legacy is specific than where the legacy is general or residuary, and therefore said acts are inoperative and void for the same reasons set out in Reasons 2, 3 and 4.

8. Because the assessment of said tax referred to in Reason No. 2 under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and amended by Chapter 392 of the laws of 1915 in the case of non-resident citizens of the United States operates differently than upon resident citizens of the State of New Jersey and non-resident citizens of the United States who are specific
58 legatees, and therefore said statutes are inoperative and void for the same grounds set out in Reasons 2, 3 and 4.

9. Because as against the appellants and the other persons referred to in Reason No. 2 the assessment of said tax referred to in said Reason No. 2 under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of the Laws of 1915 in a case where there are non-resident residuary legatees is assessed in a different manner and at a higher rate than on the transfer of stocks bequeathed to specific legatees or general or residuary legatees of the same class referred to in Section 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the laws of 1914, and amended by Chapter 392 of the Laws of 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in Reasons 2, 3 and 4.

10. Because the assessment of said tax referred to in the foregoing grounds and the acts therein referred to violate the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes, Annotated, pages 791-2).

11. Because the assessment of the tax referred to in the foregoing reasons is assessed under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and
59 the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV, Sec. 7, Paragraph 3.
Art. IV, Sec. 7, Paragraph 4.
Art. IV, Sec. 7, Paragraph 12.

12. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

13. Because Chapter 228 of the Laws of 1909 and as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of

the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

14. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part thereof
60 shall be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act.

15. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to.

16. Because the stock hereinbefore referred to or the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable in the acts referred to in the foregoing grounds.

17. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has been levied, is unconstitutional, as it is a property tax and violates Article IV, Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

18. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential equality of taxation which requires that taxes be imposed under a rule of uniformity.

61 19. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the succession thereto and transfer thereof, which cannot be subject to taxation by the State of New Jersey.

20. Because said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

21. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article 1, Section 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

22. Because Chapter 228 of the Laws of 1909 as amended by

Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision.

23. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided.

24. Because the said Comptroller did not correctly compute the said tax in accordance with the provision of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter
62 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, referred to the entire amount of the legacy transferred under the will instead of the amount subject to the previous rate of taxation.

25. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the legacy of New Jersey assets passing to the beneficiary.

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1, of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, on the legacy of the New Jersey assets passing to the beneficiary.

27. Because the Supreme Court by rule entered on December 18, 1916, ordered the appraisement and assessment of the said transfer or inheritance tax to be in all things affirmed with costs to the defendants, whereas said court should have set aside said tax.

COULT & SMITH,
Attorneys for Prosecutors.

Filed January 23, 1917. Thomas F. Martin Clerk.

Due and legal service of the within Notice and Grounds of Appeal is hereby acknowledged.

JOHN W. WESCOTT,
Attorney General.

63 *Appendix.*

The opinion in the case of Torrence v. Edwards is presented here because it is cited in disposing of one of the ground- of appeal and is not yet reported.

New Jersey Supreme Court (June Term, 1916).

ANNA B. TORRENCE, Executrix, etc., Prosecutor,

vs.

EDWARD I. EDWARDS, Defendant.

On Certiorari.

(Submitted June Term, 1916.) Decided — 1916.

Before Justices Swayze, Minturn and Kalisch.

For the prosecutrix, Stephen H. Little.
For the defendant, Theodore Backes and Herbert Boggs.
The opinion of the court was delivered by

KALISCH, *J.*:

The matter in controversy in this case relates to the legality of the method of computation adopted by the defendant in ascertaining and levying an assessment under the inheritance tax act.

The construction of that part of section 4 of the inheritance tax act (P. L. 1914, p. 269) dealing with exemptions and the im-
64. position of a graduated transfer tax upon decedents' estates is involved. The decedent, a widow, died September 3, 1915, leaving a last will by which instrument she bequeathed and devised her entire estate to her daughter, the prosecutrix.

There is no controversy regarding the value of the estate, as appraised by the Comptroller.

The value of the estate, both personal and real was appraised at	$248,152.16
Debts, expenses, etc.	9,035.30
Net for distribution	$239,116.86
Exempt interests	5,000.00
Taxable interests	$234,116.86

The tax assessed was $3,732.34 and was computed as follows:

Exempt	$5,000.00	
1% on	45,000.00	$450.00
1½% on	100,000.00	1,500.00
2% on	89,116.86	1,782.34
	$234,116.86	$3,732.34

The prosecutrix claims that the tax should have been assessed as follows:

1% on	$50,000.00	$500.00
1½% on	150,000.00	2,250.00
2% on	34,116.86	682.34
	$239,116.86	$3,432.34

It is obvious that the rule of computation contended for by the prosecutrix differs materially from the rule in that respect adopted by the defendant. By comparing the results arrived at by the two methods of computation of the tax, it appears that the result
65 of the defendant's computation exceeds by three hundred dollars the amount which the prosecutrix contends is legally assessable under the statute.

For the prosecutrix it was argued that the act of 1914 was copied from the New York statute on the subject and hence that it will be assumed that the New York statute was taken by our legislature with the construction put upon it by the courts of that state.

That under the decisions of the courts of the State of New York a method of computation such as was adpoted in the present case by the defendant was held to be erroneous, whereas the method of computation, as contended for the prosecutrix was declared to be the proper rule.

In this connection it becomes important to mention that the provision in the inheritance tax act of 1910 of the State of New York relating to the graduating of taxes, was amended in 1911.

A comparison of the provision of the graduated tax act of New York of 1910 with the provision of section four of our act of 1914 will show a marked dissimilarity in language.

It was the act of 1910 which was construed in the case, in re Jourdan's Estate (1910), 70 Misc. Rep. 159; 128 N. Y. Supp. 728, 206 N. Y. 6531 99 N. E. 1109.

The construction given to the act of 1910 by the courts of the State of New York, is significant in that it was founded upon the use of the language employed in the act graduating the tax, for example, such as: "Upon all amounts in excess of the said twenty-five thousand dollars and up to and including the sum of one hundred thousand dollars."

It was on the use of the words "and including" in the act of 1910, and which are not contained in the New Jersey statute, that
66 the New York courts rested the construction contended for by the prosecutrix.

It is true that in 1911 the New York statute was amended and the words "and including" omitted from the provisions referred to and that the same question that was raised in the Jourdan case, supra, was again raised under the act of 1911 in re Herman Schwartz, where it was held by Surrogate Fowler that though there was a change in the language of the statute the decision of the Court of Appeals in the Jourdain case was controlling. This decision was affirmed by

the Appellate Division, without opinion but not unanimously. In re Schwartz, 141 N. Y. Supp. 349; S. C. on appeal, 209 N. Y. 537; 102 N. E. 1113.

It is apparent that the omission of the words "and including" from the New York statute of 1911 makes the resemblance between the provisions of the New York and New Jersey statutes relating to the graduating tax very close.

While we recognize the force of the rule laid down in Neilson v. Russell, 76 N. J. L. 655; Clay v. Edwards, 84 N. J. L. 221, and Hopper v. Edwards, 96 Atl. Rep. 667, that where the legislature enacts a provision taken from a statute of another state in which the language of the act has received a settled construction, it is presumed to have intended that such provision should be understood and applied in accordance with that construction, we do not think that this rule is applicable with full force here since it is clear that to adopt the construction of the New York courts requires a twisting of the natural sense of the language of our act from its plain import.

Besides all this there is the fact that the state of California had a statute in 1905 to which the New Jersey statute bears a close resemblance, and, therefore, it would be an equally fair presumption that the provision in our statute relating to the graduated tax was patterned after the California statute as that it was taken from the New York statute. And as there is a strong resemblance between the provision of the New York statute of 1911 relating to the graduated tax to the one in the California statute of 1905, it may be argued with great force that the New York provision was copied from the one in California, and that the construction given by the California courts to the statute should have been followed. From an examination of the California cases it appears that the same construction was put on the provision in its statute as was exemplified by the defendant in his computation based on the New Jersey statute. See in re Bull's Estate, 153 Cal. 715; 96 Pac. 366 (1908); In re Trimkin's Estate, 109 Pac. Rep. 608 (Cal. 1910). Furthermore we think the language of the provision of the statute, under discussion is too plain to make it necessary to seek the interpretation placed upon a like provision by the courts of a sister state, where the act is supposed to have had its origin.

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If we entertained a doubt as to the meaning of the language of the act, as expressed by the legislature, it would be incumbent upon us in dealing with a statute imposing a tax, to resolve that doubt in favor of the taxpayer. But we are not disturbed by any doubt. The New Jersey statute applicable to the facts of the present case provides that the transfer of the property shall be taxed at the rate of one per centum on any amount in excess of $5,000 up to $50,000. The clear meaning of this is that $45,000 shall be subject to a one per centum tax; then 1½% per centum on amount in excess of $50,000 up to $150,000. Now it is clear that the amount in excess of $50,000 up to $150,000 is $100,000 therefore, $100,000 is subject to the 1½ per centum tax; then 2 per centum on any amount in excess of $150,000 up to $250,000. Again it is as clear as language and mathematics can make it that the amount in excess

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of $150,000 up to $250,000 is $100,000 and is subject to the two per centum tax; then follows the general clause "and three per centum on any amount in excess of $250,000."

It is quite obvious that if the theory of the prosecutrix should prevail, the three per centum clause would not be applicable until the amount was in excess of $455,000 which is clearly against the express declaration of the statute.

The writ will be dismissed and the assessment affirmed.

69 Form C 248.—Doc. No. ——.

STATE OF NEW JERSEY:

Court of Errors and Appeals, March Term, 1917.

Appeal from Supreme Court.

Error to — Court.

No. 108 of March Term, 1917.

LAWRENCE MAXWELL et al., EXRS., Appellants,

and

EDWARD I. EDWARDS et al., Respondents.

Date —, 1917.

Chancellor presiding.

Opinion by the Court.

Check List.	Affirm.	Reverse.	Modify.
The Chancellor	1	.....	.....
Mr. Justice Garrison	1	.....	.....
" " Trenchard	1	.....	.....
" " Bergen	1	.....	.....
" " Black	1	.....	.....
Judge White	1	.....	.....
" Heppenheimer	1	.....	.....
" Williams	1	.....	.....
" Taylor	1	.....	.....
" Gardner	1	.....	.....
Totals	.....	.....	.....

Filed Jun. 18, 1917. Thomas F. Martin, Clerk.

70 New Jersey Court of Errors and Appeals, March Term, 1917.

No. 108–51 A.

LAWRENCE MAXWELL et als., Executors, &c., of Last Will of James McDonald, Deceased, Prosecutors–Appellants,

v.

EDWARD I. EDWARDS, State Comptroller of the Treasury of New Jersey, et als., Defendants–Respondents.

Argued March 13, 1917. Decided June 18, 1917.

On appeal from Supreme Court.

For Appellants: Messrs. Coult & Smith, Edward De Witt of New York.

For Respondents: John W. Westcott, Attorney-General, John R. Hardin, Esq.

Per Curiam:

The constitutionality of the Act of April 9th, 1914, P. L. 1914 P. 267, amending the inheritance tax law of April 20th, 1909, P. L. 1909 P. 325; having been sustained, by the Supreme Court, in an opinion, by Mr. Justice Minturn, Maxwell vs. Edwards, 99 Atl. R. 138.

Nothing need be added thereto, on the constitutionality of the Act, but it is important that the facts illustrating the method, by which the transfer inheritance tax was levied in this case may be amplified somewhat, thus, the return to the writ of certiorari shows the appraised value of the entire estate, wherever situate, was ascertained and fixed at $3,969,333.25. From this amount was deducted $328,914.04, being the appraised value of the New Jersey
71 stocks specifically bequeathed to the widow and stranger, leaving $3,640,419.21, from which figure was deducted $270,813.17, being the amount allowed for debts, administration expenses, etc., leaving a net estate of $3,369,606.04; from this net estate was deducted legacies bequeathed under the will, together with legacies to beneficiaries in the 5% class and the interest of the widow in the estate, other than New Jersey stocks specifically bequeathed, amounting to $651,474.25, leaving a residuary estate of $2,718,131.79.

The appraised value of the New Jersey stocks specifically bequeathed to the widow was ascertained to be $246,685.53, and the rate of taxation assessed thereon is 1 per cent., 1½ per cent. and 2 per cent., making the tax due this State on this specific bequest to the widow $3,933.71.

The appraised value of the New Jersey stock, specifically bequeathed to the stranger was ascertained at $82,228.51, and the rate

of taxation on the value of this bequest is 5 per cent., making the amount of tax due $4,111.42. The appraised value of the New Jersey stocks owned by the decedent, at the time of death was $1,114,965.00; from this appraised value was deducted the appraised value of the New Jersey stocks specifically bequeathed to the widow and stranger, amounting to $328,914.04, leaving the net appraised value of the New Jersey property, which formed a portion of the general assets of the estate, at $786,050.96.

The method employed in ascertaining the tax due this State, on the transfer of the shares of stock of the New Jersey corporations not specifically bequeathed, is as follows:

72 The amount of legacies, etc., passing to beneficiaries taxed at the rate of 5 per cent. was determined at $356,761.26, making the tax due thereon at the rate of 5 per cent. $17,838.06. The interest of the widow in the estate, other than shares of New Jersey stocks specifically bequeathed, was determined to be $294,712.99, and the statutory exemption of $5,000.00 was deducted and the tax at the rate of 2 per cent. and 3 per cent. was $8,658.24. The residuary estate was taxed, as passing to the son and two grand children and determined to be $2,718,131.79, and the statutory exemption of $5,000.00 to each, totaling $15,000.00, was deducted, and the balance taxed at the rate of 1 per cent., 1½ per cent., 2 per cent. and 3 per cent., making the tax on the residuary estate $70,893.95.

The total amount of tax on the interest of the collateral heirs and the amount passing to the widow, together with the residuary estate passing to the son and grand-children, as set forth above, total $97,390.25.

The percentage or proportion of the New Jersey stocks (not specifically bequeathed) which total $786,050.96, bears to the entire estate (less specific bequests of New Jersey stocks) which total $3,640,419.21 was determined to be .2159 thus:

$3,640,419.21)$786,050.96(.2159

This percentage or proportion of $97,390.25, which is the tax that would have been due, if the decedent had died a resident of this state and all his property had been located here equals $21,026.55. The total amount of tax, as set forth above, which included the tax on the New Jersey stocks specifically bequeathed to the widow and stranger and the New Jersey stock which forms a portion of the

73 general assets of the estate, totals $29,071.68 the amount of the tax.

The judgment of the Supreme Court is affirmed with costs.

Endorsed: "Filed Jun- 18, 1917. Thomas F. Martin, Clerk."

74 State of New Jersey.

[Coat of Arms.]

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby Certify that the foregoing is a true copy of an opinion read by said Court in the above-stated cause, March Term, 1917, as the same is taken from and compared with the original now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twenty-seventh day of July, A. D. 1917.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

75 [Endorsed:] New Jersey Court of Errors and Appeals, March Term, 1917. Between Lawrence Maxwell, et als., Executors &c. of Last Will of James McDonald, deceased, Prosecutors-Appellants, v. Edward I. Edwards, State Comptroller of the Treasury of New Jersey, et als., Defendants-Respondents. Opinion.

76 New Jersey Court of Errors and Appeals, June Term, 1917.

Between—

LAWRENCE MAXWELL et al., Ex'rs, &c., Appellants,

vs.

EDWARD I. EDWARDS et al., Respondents.

On Appeal from Supreme Court.

Order on Affirmance of Judgment.

This cause having been duly argued at the March Term, 1917 of this court by Coult & Smith, of counsel for the appellants and John W. Wescott, of counsel for the respondents and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court—

It is thereupon, on this Eighteenth day of June in the year of our Lord one thousand nine hundred and seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be re-

mitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

JOHN W. WESCOTT,
Attorney for Respondents.

77 [Endorsed:] New Jersey Court of Errors and Appeals, June Term, 1917. Lawrence Maxwell et al., Ex'rs, &c., Appellants, vs. Edward I. Edwards et al., Respondents. On Appeal from Supreme Court. Order Affirming Judgment. John W. Wescott, Att'y. Filed Jul- 16, 1917. Thomas F. Martin, Clerk.

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex officio Clerk of the Court of Errors and Appeals in the Last Resort in all Causes, do hereby certify, that the foregoing is a true copy of an order made by said Court in the above-stated cause, dated June 18th, 1917, as the same is taken from and compared with the Minutes of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal, at Trenton, this Twenty-seventh day of July, A. D. 1917.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

78 New Jersey Court of Errors and Appeals.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Prosecutors-Appellants,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey (Successor to and Substituted for Edward I. Edwards), and William T. Read, State Treasurer (Successor to and Substituted for Edward E. Grosscup), Defendants-Respondents.

On Certiorari.

Petition for Writ of Error to the United States Supreme Court.

To the Honorable Edwin Robert Walker, Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey:

The petition of Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James Mc-

Donald, deceased, prosecutors-appellants in the above entitled action, respectfully represents:

1. That your petitioner Lawrence Maxwell is a citizen of the United States and of the State of Ohio and your petitioner Fulton Trust Company of New York is a citizen of the United States and of the State of New York; that your petitioners have duly qualified as executors of the last will and testament of James McDonald, deceased, who was at the time of his death a citizen of the United States and of the District of Columbia.

2. That at the present June term of this court final judgment was rendered in the above stated action, wherein your petitioners, Lawrence Maxwell and Fulton Trust Company of New York, Ex-
79 ecutors of the Last Will and Testament of James McDonald, deceased, were prosecutors-appellants, and the defendants, Newton A. K. Bugbee, Comptroller of the Treasurer of the State of New Jersey (successor to and substituted for Edward I. Edwards) and William T. Read, State Treasurer (successor to and substituted for Edward E. Grosscup) were defendants-respondents, in the New Jersey Court of Errors and Appeals, which court is the court of last resort in all causes in this State and the highest court of law and equity in the State of New Jersey in which a decision could be had.

3. That said action was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Comptroller of the State of New Jersey and the Treasurer of the State of New Jersey, to review the legality of a certain assessment of tax made on or about the fifteenth day of December, nineteen hundred and fifteen, assessing a transfer inheritance tax against the said petitioners on the transfer of property of the late James McDonald coming into the hands of your petitioners.

4. That upon the hearing in said action the Supreme Court of New Jersey affirmed said assessment of said tax, whereupon your petitioners appealed from said judgment to the Court of Errors and Appeals, and the matter coming on to be heard before this court, the judgment of the Supreme Court was in all things affirmed.

5. That said action by the said Comptroller of the State of New Jersey assessing a tax as aforesaid was in violation of the Constitution of the United States in that the method of assessment objected to denies to James McDonald, the decedent, his executors and the beneficiaries under his will, all nonresident citizens, an immunity enjoyed by resident citizens and their legatees and distributees, viz.,
80 the taxing of the transfer of stock or other property which is subject to the jurisdiction of the State of New Jersey at a rate not greater than set forth in Section 1 of the Taxing Act, which is the rate that applies to resident decedents; and in that the assessment of said tax is in violation of Paragraph 1, Section 2 of Article IV of the Federal Constitution and the Civil Rights Acts passed thereunder, as infringing upon the privileges and immunities of nonresident citizens, and also in violation of the Fourteenth Amendment in that the method of assessing the tax applied violates the essential equality of taxation which requires that taxes be imposed upon a rule of uniformity, and in that in assessing the tax the assessment was

based upon property over which the State of New Jersey had no jurisdiction.

6. That your petitioners urged in said Supreme Court and in said Court of Errors and Appeals that all of said matters and things were secured to your petitioners under and by virtue of Paragraph 1, Section 2 of Article IV of the Federal Constitution, and under and by virtue of the Fourteenth Amendment to the Federal Constitution, and under and by virtue of Sections 1977 and 1987 of the Revised Statutes of the United States, and under and by virtue of Article 1, Section 10, paragraph 1 of the Federal Constitution, and the assessment and imposition of said tax was in violation of Article IV of the amendments to the Federal Constitution; and your petitioners urged that the judgment of the Supreme Court and the judgment of the Court of Errors and Appeals were in violation of the Constitution of the United States and the Federal Statutes, and particularly of the aforesaid provisions thereof.

7. That the judgment of the Supreme Court was based upon an opinion rendered in that court wherein the court dealt with
81 some of the federal questions raised, the court stating in its opinion as follows:

"The effect of the legislation under consideration has been determined by this Court, and the Court of Errors, in a series of cases in which its legality was attacked from various aspects, with the result of sustaining it as a legislative effort to impose a succession as contra distinguished from a property tax. It is further deducible from these decisions, that this legislative power, when not exerted in an arbitrary or capricious manner, or in disregard of fundamental rights, does not contravene any inhibition intended to secure equality of right, contained in the provisions of the Federal or State Constitutions.

* * * * * * *

"Pursuit of the subject further from the view point of legality and reasonableness under the constitutional inhibitions, of this legislative method of equalizing taxation, as between the estates of resident and nonresident decedents, might appear to be but an academic task in the light of these adjudications; but it may not be out of place to observe in passing, that the principle of this legislation has met with the approval of the highest courts in other jurisdictions, where the question has been presented for judicial determination.

Adams Ex. Co. v. Indiana, 165 U. S., 252.
Adams Ex. Co. v. Ohio, 165 U. S., 195.
Adams Ex. Co. v. Kentucky, 166 U. S., 171.
St. Louis S. W. Ry.. Co. v. Arkansas, 235 U. S., 350.

"The general power of the State to enact legislation of this character, and its impregnability to attack on constitutional grounds, is amply emphasized and vindicated by Mr. Justice Pitney, in St. Louis S. W. Ry. Co. v. Arkansas, wherein he declares 'Nothing in the Fourteenth Amendment imposes any iron clad rule upon the State with respect to their internal taxation, or prevents them from im-

posing double taxation, or any other form of unequal taxation, so long as the inequality is not based upon arbitrary distinctions.' There remains, therefore, to consider only the concrete objection presented by the prosecutor, in the form of various reasons to this method of taxation; the contention being that in the case sub judice its application results in inequality to this particular estate.

* * * * * * *

"It may well be, that the tax ratio in actual application in this instance, may as exemplified by the prosecutor's method of computation, produce a result different from that which will be obtained, under the method applicable to the estates of resident decedents; but as we have observed, that fact does not furnish the determining test as to the validity of this legislative scheme, nor does it prove the absence of the necessary constitutional element of equality, as that term has been defined by the adjudged cases."

8. That the New Jersey Court of Errors and Appeals being the highest court in the State of New Jersey in which said judgment could be rendered sustaining the tax hereinbefore referred to,
82 and said court having affirmed the judgment of the Supreme Court, basing its determination on the judgment of the Supreme Court and holding that the assessment of the tax herein was valid and effectual in law, and having decided that your petitioners are not entitled to the rights claimed in and by virtue of the Constitution of the United States and the Federal Statutes hereinbefore referred to, your petitioners allege that they are aggrieved in that in the proceedings aforesaid the said courts have denied to them the rights to which they are entitled as citizens of the United States and of States other than the State of New Jersey, all of which will more fully and particularly appear in detail in the record presented herein.

Your petitioners therefore pray that a writ of error may issue from the Supreme Court of the United States directed to the New Jersey Court of Errors and Appeals, removing the judgment and proceedings aforesaid, that there may be done thereof what according to the Constitution of the United States and the laws of the land ought to be done, and that your petitioners may have such other relief as may be proper.

And your petitioners will ever pray, etc.

LAWRENCE MAXWELL AND
FULTON TRUST COMPANY OF
NEW YORK,
Executors of the Last Will and Testament
of James McDonald, Deceased,
By JOSEPH COULT,
Attorney for Prosecutors-Appellants.

STATE OF NEW JERSEY,
County of Essex, ss:

Joseph Coult, of full age, being duly sworn, deposes and says: That he — the attorney for and of counsel with the petitioners in

the foregoing petition named, and that the facts stated in said petition are true.

JOSEPH COULT.

83 & 84 Subscribed and sworn to before me this 16th day of July, 1917.

[SEAL.] FLORENCE I. ENNIS,
Notary Public of New Jersey.

85 [Endorsed:] New Jersey Court of Errors and Appeals. Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, Prosecutors-Appellants, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (successor to and substituted for Edward I. Edwards) and William T. Read, State Treasurer (successor to and substituted for Edward E. Grosscup), Defendants-Respondents. On Certiorari. Petition for Writ of Error to the United States Supreme Court. Joseph Coult, Attorney for Prosecutors-Appellants, 763 Broad St., Newark, N. J. Read on application for writ of error July 20, 1917. Writ of Error allowed, E. R. Walker, Chancellor and President Judge of the N. J. Court of Errors and Appeals in the last resort in all causes.

86 UNITED STATES OF AMERICA, *ss:*

[Seal District Court of the United States, District of New Jersey.]

The President of the United States of America to the Honorable the Presiding Judge and Justices and Judges of the Court of Errors and Appeals of the State of New Jersey, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said action between Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, prosecutors-appellants, and Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (successor to and substituted for Edward I. Edwards) and William T. Read, State Treasurer (successor to and substituted for Edward E. Grosscup), defendants-respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor
87 of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or

statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption especially set up or claimed under such clause of the said constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 24th day of July, in the year of our Lord one thousand nine hundred and seventeen.

GEORGE T. CRANMER,
Clerk U. S. Dist. Ct., Dist of N. J.,
By ROBERT S. CHEVRIER,
Deputy.

JOSEPH COULT,
Attorney for Plaintiffs in Error.

88 [Endorsed:] 4018. Supreme Court of the United States. Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, Plaintiffs in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (successor to and substituted for Edward I. Edwards) and William T. Read, State Treasurer (successor to and substituted for Edward E. Grosscup), Defendants in Error. Writ of Error to the New Jersey Court of Errors and Appeals. Joseph Coult, Attorney for Plaintiffs in Error, 763 Broad St., Newark, N. J. Service of the within writ of error acknowledged for both def'ts this 24th day of July, 1917. John W. Wescott, Att'y Gen'l. Allowed by att'y for Def'ts in Error. E. R. Walker, Chancellor and President Judge of the N. J. Court of Errors and Appeals in the last resort in all causes. Clerk's fees for issuing writ, $1, Paid.

89 Know all men by these presents, That we, Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, as Principals, and National Surety Company, a corporation organized and existing under the laws of the State of New York, and authorized to do business in the State of New Jersey, as Surety, Obligors, are held and firmly bound unto Newton A. K. Bugbee, Comptroller of

the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey, Obligees, in the full and just sum of Five Hundred Dollars ($500), lawful money of the United States of America, to be paid to the said obligees, or to their certain attorney, attorneys, successor, successors or assigns, to which payment well and truly to be made the said obligors bind themselves and their successors, jointly and severally, firmly by these presents.

Sealed with their respective seals and dated this tenth day of July in the year of our Lord One Thousand Nine Hundred and Seventeen.

Whereas, lately in the New Jersey Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, in a suit pending in said court between Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, Prosecutors-Appellants, and Edward I. Edwards, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, Defendant-Respondents, final judgment was rendered against the said Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will
90 and Testament of James McDonald, deceased, and in favor of said Edward I. Edwards, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer, and the said Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, being about to apply for a writ of error to reverse the said judgment in said suit and for the issuing of a citation directed to the said Newton A. K. Bugbee, Comptroller of the State of New Jersey and William T. Read, State Treasurer, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington in the District of Columbia.

Now, therefore, the condition of the above obligation is such that if the said Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, Sealed and Delivered in the presence of
ARTHUR J. MORRIS.

LAWRENCE MAXWELL,
FULTON TRUST CO. OF NEW YORK,
By HENRY C. SWORDS, *President;*
[COR. SEAL.] C. M. VAN KLEECK, *Secretary.*

NATIONAL SURETY COMPANY,
[COR. SEAL.] By FRANKLIN M. WOLF,
President Vice-President.

Attest:
H. L. MARSH,
Resident Assistant Secretary.

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91 STATE OF NEW JERSEY,
County of Essex,
City of Newark, ss:

On this 16th day of July, 1917, before me, the subscriber, a Commissioner of Deeds for New Jersey, duly commissioned and sworn, personally came Herbert L. Marsh, who, being by me duly sworn, on his oath, saith: That he is the Resident Assistant Secretary of the National Surety Company of the State of New York, and that he resides in the City of Newark, N. J., that he knows Franklin M. Wolf, Resident Vice-President of the National Surety Company, and he knows, too, the corporate seal of the said Company; that the seal affixed to the foregoing instrument is such corporate seal; and it was affixed by the said Resident Vice-President and the said instrument signed by the said Resident Vice-President, as Resident Vice-President of said Company, attested by deponent as Resident Assistant Secretary by order of the Board of Directors of said Company in deponent's presence as the voluntary act and deed of said Company, that said Company has duly complied with all the requirements of Chapter 134 of the Laws of the State of New Jersey of the year 1902; that the good available assets of the Company exceed its liabilities, as such liabilities are ascertained in the manner provided in said Chapter; that the National Surety Company is duly incorporated under the laws of the State of New York; and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said Chapter; and has on deposit with the Superintendent of Insurance of the State of New York, good securities worth at par and at market value at least Two Hundred Thousand Dollars ($200,000), held for the security of its obligations and has a fully paid up, safely invested, and,
92 unimpaired capital of Three Million Dollars; and said Company has appointed the Commissioner of Banking and Insurance of New Jersey and his successor in office as its true and lawful Attorney in the State of New Jersey, upon whom process of Law can be served, and has filed in the office of the Commissioner of Banking and Insurance, a written instrument duly signed and sealed, certifying such appointment, together with the residence and office of such Attorney, within the State of New Jersey; and that the following is a true copy of a By-Law duly adopted by the Board of Directors of the said National Surety Company on the 6th day of February, 1912, at a regular Meeting, to wit:

Article XIII.

Section I. Signatures required.—All bonds, recognizances, or contracts of indemnity, policies of insurance, and all other writings obligatory in the nature thereof, shall be signed by the President, a Vice-President, a Resident Vice-President, or Attorney-in-Fact, and shall have the seal of the Company affixed thereto, duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. All Vice-Presidents and Resident Vice-Presidents shall each have

authority to sign such instruments, whether the President be absent or incapacitated, or not, and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated, or not; and the Attorneys-in-Fact shall each have authority, in the discretion of such Attorneys-in-Fact, to affix to such instru-
93 ments an impression of the Company's seal, whether the Secretary be absent or incapacitated, or not, or to attach the individual seal of the Attorney-in-Fact thereto, or to use the scroll of the Attorney-in-Fact, or a wafer, wax, or other similar adhesive substance affixed thereto, or a seal of paper or other similar substance, or use the word "Seal" or the letters "L. S." opposite the signature of such Attorneys-in-Fact, as the case may be.

H. L. MARSH,
Resident Assistant Secretary.

Sworn and Subscribed in the City of Newark, in the County of Essex and State of New Jersey this 16th day of July, A. D. 1917, before me A Commisioner of Deeds for New Jersey duly commissioned and sworn.

M. HELEN HENNESSY,
A Commissioner of Deeds for New Jersey.

94 [Endorsed:] Bond. Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, to Newton A. K. Bugbee, Comptroller of the State of New Jersey, and William T. Read, Treasurer of the State of New Jersey. Dated, 10 July, 1917. Approved as to form, amount and sufficiency of surety. July 20, 1917. E. R. Walker, Chancellor and President Judge of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey.

95 Supreme Court of the United States.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Plaintiff in Error,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey (Successor to and Substituted for Edward I. Edwards) and William T. Read, State Treasurer (Successor to and Substituted for Edward E. Grosscup), Defendants in Error.

On Writ of Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

And now come Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, plaintiffs in error, and pray for a reversal of the judgment of the Court of Errors and Appeals of the State of New Jersey entered on the 16th day of July, 1917, affirming the judgment of the Supreme Court of the State of New Jersey entered on the 18th day of December, 1916, affirming a certain appraisement and assessment of a transfer or inheritance tax brought up for review by virtue of a writ of certiorari issued out of the Supreme Court of the State of New Jersey; and they pray for a reversal of the aforesaid judgments of the Court of Errors and Appeals of the State of New Jersey and of the Supreme Court of the State of New Jersey, and that the tax assessed as aforesaid be set aside and for nothing holden.

JOSEPH COULT,
Attorney for and of Counsel with Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, Dec'd, Plaintiffs in Error.

763 Broad St., Newark, N. J.

96 [Endorsed:] 4018. Supreme Court of the United States. Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, Deceased, Plaintiffs in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (Successor to and Substituted for Edward I. Edwards) and William T. Read, State Treasurer (Successor to and Substituted for Edward E. Grosscup), Defendants in Error. On Writ of Error. Prayer for Reversal. Joseph Coult, Attorney for Plaintiffs in Error, 763 Broad St., Newark, N. J.

97 UNITED STATES OF AMERICA, *ss:*

To Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (Successor to and Substituted for Edward I. Edwards) and William T. Read, State Treasurer (Successor to and Substituted for Edward E. Grosscup), Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Errors and Appeals of the State of New Jersey, wherein Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, are plaintiffs in error and you are defendants in error, to show cause if any there by, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edwin Robert Walker, our Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey, this 20th day of July, in the year of our Lord one thousand nine hundred and seventeen.

E. R. WALKER,
Chancellor, Presiding Judge of the Court of Errors and Appeals of the State of New Jersey, in the Last Resort in All Causes.

98 [Endorsed:] 4018. Supreme Court of the United States. Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, Deceased, Plaintiffs in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (Successor to and Substituted for Edward I. Edwards) and William T. Read, State Treasurer (Successor to and substituted for Edward E. Grosscup), Defendants in Error. On Writ of Error. Citation. Joseph Coult, Attorney for Plaintiffs in Error, 763 Broad St., Newark, N. J. Service of the within citation acknowledged for both defendants this 28th day of July, 1917. John W. Wescott, Att'y Gen'l, Att'y of Def't in Error.

99 Supreme Court of the United States.

LAWRENCE MAXWELL and FULTON TRUST COMPANY OF NEW YORK, Executors of the Last Will and Testament of James McDonald, Deceased, Plaintiffs in Error,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey (Successor to and Substituted for Edward I. Edwards), and William T. Read, State Treasurer (Successor to and Substituted for Edward E. Grosscup), Defendants in Error.

On Writ of Error.

Assignments of Error.

To the Honorable the Justices of the Supreme Court of the United States:

And now come Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, plaintiffs in error, and make and file these assignments of error:

That there is manifest error in the record and proceedings herein:

1. Because by the judgment of the Court of Errors and Appeals of the State of New Jersey in affirming the judgment of the Supreme Court of the State of New Jersey, which affirmed a certain transfer or inheritance tax assessed and made against said plaintiffs in error on the estate of the said James McDonald on or about the 15th day of December, 1915, and brought to the New Jersey Supreme Court by writ of certiorari issued out of that court in this cause, said
100 court erred and should have reversed the judgment of the New Jersey Supreme Court and set aside said tax.

2. Because said Court of Errors and Appeals of the State of New Jersey erred in not reversing said judgment of the said Supreme Court of the State of New Jersey in this action for the several causes and reasons, or for one or more of the causes and reasons and assignments of error filed by the plaintiffs in error and in not sustaining the allegations of error so filed.

3. Because the tax under review in this action on the transfer of stock in New Jersey corporations forming part of the estate left by the late James McDonald, a nonresident of the State of New Jersey and a citizen of the United States and of the District of Columbia, is assessed pursuant to the third or last paragraph of Section 12 of an act entitled "An Act to tax the transfer of property, of resident and nonresident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April 20, 1909, as amended by Chapter 151 of Public Laws of 1914, and should not be sustained because said paragraph of Section 12 is inoperative as against the transfer of the aforesaid stock, and be-

cause the assessment of the tax pursuant to said paragraph denies to James McDonald and his estate, and to his executors, citizens of the United States and of states of the United States other than the State of New Jersey, and to the beneficiaries of his will and residuary legatees, all citizens and residents of the United States and citizens and residents of states of the United States other than the State of New Jersey and nonresidents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey,
101 and therefore said section and the assessment of the tax thereunder contravenes Article IV, Sec. 2, Par. 1 of the Federal Constitution, and the plaintiffs in error now claim and have claimed in the court of the first instance the protection thereof.

4. Because the tax referred to in the third assignment of error under review in this action, and assessed pursuant to the statute referred to therein, provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under said statute requires the enforcement of a law which abridges the privileges and immunities which were of James McDonald and now of his estate and of his executors and the beneficiaries under his will, including his residuary legatees, all residents and citizens of the United States and of other states of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution, and the plaintiffs in error here claim the protection of the same and claimed the protection thereof in the court of the first instance.

5. Because the transfer tax under review in this action and referred to in the third assignment of error, in being assessed pursuant to Section 12 of the act therein referred to denies to James McDonald, his estate, his executors and the legatees under his will, all residents and citizens of the United States and of states other than the State of New Jersey and nonresidents of the State of New Jersey, the equal protection of the laws of the State of New Jersey, and particularly the assessment and imposition of said tax pursuant to the acts re-
102 ferred to contravenes the Fourteenth Amendment of the Federal Constitution, and the plaintiffs in error claim the protection thereof.

6. Because the assessment and imposition of the tax referred to in the third assignment of error is unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV, Sec. 2, Par. 1 of the Federal Constitution by denying to the plaintiffs in error and to the other persons mentioned in the third assignment of error privileges and immunities enjoyed by citizens of the State of New Jersey and the plaintiffs in error claim the protection of said constitutional provision and have claimed the same in the court of the first instance.

7. Because the acts referred to in the third assignment of error are unconstitutional and void and the tax thereunder, as referred to therein, should be set aside and for nothing holden because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the plaintiffs in error and the other persons referred to in said third assignment of error and

deny to them the equal protection of the laws of the State of New Jersey and particularly of the acts referred to, and the plaintiffs in error claim the protection of said constitutional provision and have claimed the same in the court of the first instance.

8. Because the assessment of said tax, referred to in the third assignment of error, under the acts therein referred to operates differently in the case of citizens of the United States and of a state other than the State of New Jersey than it does when upon residents and citizens of the State of New Jersey upon a transfer to persons
103 of the same class and where the legacy is general or residuary, and therefore such acts are inoperative and void and the tax thereunder should be set aside and for nothing holden for the same reasons as set out in the previous assignments of error.

9. Because the assessment of said tax, referred to in the third assignment of error, under the acts therein referred to, in the case of citizens of the United States and of states other than the State of New Jersey operates differently than upon resident citizens of the State of New Jersey and citizens nonresident of the State of New Jersey, but who are specific legatees, and therefore said statutes are inoperative and void on the same ground set out in the previous assignments of error.

10. Because as against the plaintiffs in error and the other persons referred to in the third assignment of error, the assessment of said tax referred to therein, under the acts therein referred to, in a case where there are non-resident residuary legatees, citizens of the United States and of states other than the State of New Jersey, is made in a manner different from and at a higher rate than on the transfer of stock bequeathed to specific legatees of the same class referred to in said statutes, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the provisions of the Federal Constitution referred to in the previous assignments of error.

11. Because the assessment of said tax referred to in the foregoing assignments of error and the acts referred to therein violates the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 F. R. Ann. pp. 791 and 792) for the reasons
104 set out in the previous assignments of error.

12. Because there is no succession by virtue of the laws of the State of New Jersey on the transfers of the stock in New Jersey corporations held by a nonresident citizen of the United States and of states other than the State of New Jersey at the time of his death which is taxable pursuant to the provisions of the statutes referred to in the third assignment of error, and to so hold would violate the constitutional provisions hereinbefore referred to.

13. Because the stock hereinbefore referred to, or the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable by the acts referred to in the foregoing assignments of error.

14. Because Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, under which the assessment of the tax under review purports to have been made, is unconstitutional in

that it violates the essential equality of taxation which requires that taxes be imposed under a rule of uniformity.

15. Because the statutes hereinbefore referred to, under which the assessment of the tax under review purports to have been made, are unconstitutional and void, in that they attempt to subject to taxation property rights and the succession thereto and transfer thereof which cannot be subject to taxation by the State of New Jersey.

16. Because the statutes hereinbefore referred to are unconstitutional and violate Article 1, Section 10, Paragraph 1 of the Federal Constitution, because the enforcement thereof would impair the obligation of contracts.

17. Because the statutes hereinbefore referred to, as amended, are unconstitutional and violate Article IV of the amendment to
105 the Federal Constitution because it permits the State of New Jersey through its agents to authorize an unreasonable search in violation of such constitutional provision.

18. Because the Comptroller of the State of New Jersey did not correctly compute the tax in accordance with the provisions of the statute in such case made and provided.

19. Because the Comptroller did not correctly compute the said tax in accordance with the provisions in such case made and provided, in that he assessed the tax as if the accelerated rates of taxation set forth by Section 1, Chapter 228, of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, at page 267, referred to the entire amount of the legacy transferred under the will instead of to the amount subject to the previous rate of taxation.

20. Because the said Comptroller did not correctly compute said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller, in assessing said tax, did not apply the accelerated rates to the legacy of New Jersey assets passing to the beneficiaries.

21. Because said Comptroller did not correctly compute the said tax in accordance with the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, at p. 267, on the legacy of the New Jersey assets passing to the beneficiaries.

22. Because said act, and the assessment thereunder, is in divers other respects illegal, erroneous and contrary to law and in
106 violation of the Federal Constitution and the amendments thereof, and should be set aside and for nothing holden.

23. Because the basis of the assessment of the tax hereinbefore referred is upon property not subject to the jurisdiction of the State of New Jersey and the tax is, therefore, in violation of the provisions of the Federal Constitution, hereinbefore referred to, and is unconstitutional and void.

JOSEPH COULT,
Attorney for and of Counsel with Plaintiffs in Error.

Read on application for writ of error the 20th day of July, 1917.

E. R. WALKER,
Chancellor and President Judge of the Court of Errors and Appeals of the State of New Jersey, in the Last Resort in All Causes.

107 [Endorsed:] 4018. Supreme Court of the United States. Lawrence Maxwell and Fulton Trust Company of New York, Executors of the Last Will and Testament of James McDonald, deceased, Plaintiffs in Error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey (successor to and substituted for Edward I. Edwards) and William T. Read, State Treasurer (successor to and substituted for Edward E. Grosscup), Defendants in Error. On Writ of Error. Asssignments of Error. Joseph Coult, Attorney for Plaintiffs in Error, 763 Broad St., Newark, N. J.

108 State of New Jersey.

[Coat of Arms.]

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that there was lodged with me as such Clerk in the case of Lawrence Maxwell, et al., Exrs., &c., Prosecutors-Appellants, vs. Newton A. K. Bugbee, Comptroller, et al., Defendants-Respondents, on the Twenty-fourth day of July, A. D. Nineteen hundred and seventeen, the original Bond, of which a copy is herewith set forth; and that on the Twenty-fourth day of July, A. D. Nineteen hundred and seventeen, there was lodged with me as such Clerk, two copies of the Writ of Error, as herein set forth, one for the Defendant and one for my office.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, at Trenton, this Twenty-seventh day of July, A. D. 1917.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

109 State of New Jersey.

[Coat of Arms.]

LAWRENCE MAXWELL et al., Ex'rs, &c., Prosecutors-Appellants,

vs.

NEWTON A. K. BUGBEE, Comptroller of the Treasury of the State of New Jersey, et al., Defendants-Respondents.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, Do hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above entitled cause. And I further certify that in pursuance of the Writ of Error heretofore filed in this cause, I now herewith transmit the said transcript, together with the original Writ of Error and the original Citation, to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twenty-seventh day of July, A. D. 1917.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

Endorsed on cover: File No. 26,094. New Jersey Court of Errors and Appeals. Term No. 627. Lawrence Maxwell and Fulton Trust Company of New York, executors of the last will and testament of James McDonald, deceased, plaintiffs in error, vs. Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and William T. Read, State Treasurer. Filed August 16th, 1917. File No. 26,094.